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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Amendment of Part 73 of the Commission's	)	
Rules to Repeal Section 73.3555(c) of the	)	RM-________
Regulations Concerning Multiple Ownership	)	
Of Broadcast Stations, the Radio-Television	)	
Cross-Ownership Rule	)	

To: The Commission

PETITION FOR RULE MAKING

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Executive Summarv

In this Petition, Viacom requests the Commission to initiate a rulemaking proceeding that proposes repeal of the radio-television cross-ownership rule. This rule limits the common ownership of radio and television stations in the same market, even though the ownership of the stations would he permitted separately under the local television ownership and the local radio ownership rules. Under the local television and radio ownership rules. Viacom could own two television stations and eight radio stations in New York City. The radio-television cross-ownership rule. however, limits Viacom to owning no more than either one television station and seven radio stations or two television stations and six radio stations in New **York** City.

The radio-television cross-ownership rule is an historical anomaly, dating back to an era when the Commission believed that cross-ownership rules promoted economic competition and viewpoint diversity. The rule is no longer necessary to achieve these objectives. For example. it is clear that the Commission has for some time not viewed the radio-television cross-ownership rule as necessary to promote economic competition. Indeed, the Commission has based all of its recent radio ownership decisions on the presumption that radio and television stations compete in different advertising markets.

Radio and television stations do compete in the same "diversity market" to the extent that the public relies on both media for news and information. However, the rule itself is unnecessary to achieve "viewpoint diversity." The media "marketplace of ideas" is rich and robust, including not only radio and television, but also newspapers and cable and DBS programming services such as CNN, C-SPAN and other national 24-hour news and information channels, as well as local 24-hour cable news channels such as NY One in New York City. It also includes the Internet, which, as Congress has found, "offer[s] a forum for true diversity of political discourse." Given the wealth of media options available to the American public. it is clear that no single owner of radio and television stations can dominate any local debate on issues of public importance. Moreover, there is no empirical evidence that the radio-television cross-ownership rule has any effect on viewpoint diversity. Recent empirical studies show that commonly owned media tend to be targeted to different audiences and publish or broadcast differing viewpoints.

Of the Commission's three broadcast cross-ownership rules, only the radio-television cross-ownership rule is not currently the subject of a proceeding looking towards its repeal. Indeed, the D.C. Circuit has ordered the Commission to repeal the cable-broadcast cross-ownership rule. It is difficult to see how viewpoint diversity might be hmmed by Viacom's ownership of one or two additional radio stations in the New York City – which is all that repeal of the rule would allow – than by the common ownership of two television stations, six radio stations and a cable television system in the same market – which is now permitted in light of repeal of the cable-broadcast cross-ownership rule.

If the Commission nonetheless finds that some justification remains for the radio-Television cross-ownership rule, it should at least modify the rule to reflect more precisely the varying levels of diversity found in markets of different size. For example, the current rule applies different standards to markets based on arbitrary size distinctions, treating all markets with 20 or more independent voices the same, regardless of whether the market *has* exactly 20 independent voices, or two or three times that many, The current rule therefore arbitrarily fails to differentiate among markets having a very broad range of ownership diversity.

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To: The Commission

PETITION FOR RULE MAKING

Viacom Inc. ("Viacom"). pursuant to Section 1.401 of the Commission's rules, hereby petitions the Commission to initiate a rulemaking proceeding for the purpose of repealing the radio-television cross-ownership rule. 47 C.F.R. § 73.3555(c). The rule today is an historical anomaly. Of the three broadcast cross-ownership rules, the radio-television cross-ownership rule is on its face the least defensible. Yet of the three, one – the cable-broadcast cross-ownership – was vacated in *Fox v. FCC*, and the second – the newspaper-broadcast cross-ownership rule – is the subject of a pending rulemaking proceeding. If the Commission were to do nothing else in the forthcoming biennial review of the media ownership rules, it should initiate a rulemaking proceeding that proposes repeal of the radio-television cross-ownership rule

I. Viacom Is Adversely Affected by the Commission's Retention of the Radio-Television Cross-Ownership Rule.

Viacom is a diversified media and entertainment company with interests in. among other things, broadcast television and radio. The company is a leader in the creation, promotion, and distribution of entertainment. news, sports, and music programming appealing to diverse audiences. At present, Viacom owns 36 television stations, excluding satellites, in 28

Nielsen Designated Market Areas ("DMAs"), including nine of the top ten **DMAs,** and approximately 183 radio stations in 41 Arbitron Radio Metros, including all of the top ten and 23 of the top 25 Arbitron Radio Metros.

Viacom has been and continues to be adversely affected by the radio-television cross-ownership rule. Viacom currently owns the maximum number of radio and television stations permitted under the radio-television cross-ownership rule in seven Arbitron Radio Metros – Los Angeles, Chicago, San Francisco, Dallas-Ft. Worth, Detroit, Baltimore and Sacramento – which include four of the top five Arbitron Radio Metros and five of the top ten DMAs. (The Arbitron Radio Metro is the relevant market under the rule.) Indeed, Viacom is one station over the limit in the Los Angeles Radio Metro, **where** Viacom recently acquired a second television station, KCAL-TV.[1]

II. The Commission Is Required to Consider Repeal of the Radio-Television Cross-Ownership Rule Under Section 202(h) of the Telecommunications Act of 1996.

The Commission needs no reminder of its obligation under Section 202(h) of the Telecommunications Act of 1996 to review all of its broadcast ownership regulations every two years, to determine whether any of the rules remains "necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to be no longer in

[1] In the Commission's decision approving Viacom's acquisition of KCAL-TV, the Commission ordered Viacom to file an applicaiion within six months of the KCAL-TV closing to come into compliance with the radio-television cross-ownership rule. *Fidelity Television, Inc. and Viacom Television Stations Group of Los Angeles, LLC*, FCC 02-140, slip op. at 2 (¶ 7) (rel. May 3, 2002). In ihe application for consent io acquire KCAL-TV, Viacom explained that, "while it fully intends to comply with the radio-television cross-ownership rule, it strongly believes that the rule no longer serves any beneficial purpose and should he repealed." Viacom advised the Commission of its intention "to petition the Commission io commence a rulemaking proceeding to determine whether io eliminate ihc rule." Viacom Television Stations Group of Lor Angeles, Application for Consent to Assignmeni of Broadcast Station License, Exhibit 14 at 13 n.2 (Mar. 2002).

the public interest."[2] As the D.C. Circuit stated in *Fox Television Stations, Inc. v. FCC*, "Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules."[3]

The Commission has only three broadcast cross-ownership rules: (1) the newspaper-broadcast cross-ownership rule, (2) the cable-broadcast cross-ownership rule, and (3) the radio-television cross-ownership rule. Of the three broadcast cross-ownership rules. only the radio-television cross-ownership rule is not the subject of a pending proceeding looking towards its repeal. In September 2001, the Commission initiated a rulemaking proceeding on the newspaper-broadcast cross-ownership rule, specifically taking note of the dramatic changes that have occurred in the local media marketplace and the fact that "consumers today have many media outlets from which to obtain news and information."[4] In February 2002, the D.C. Circuit ordered the Commission to repeal the cable-broadcast cross-ownership rule, finding it so unlikely that the Commission could justify the rule under Section 202(h) that it deemed the rule "a hopeless cause."[5]

There is simply no reason that the radio-television cross-ownership rule should not be subject to the same level of scrutiny as the newspaper-broadcast and cable-broadcast cross-ownership rules. At a minimum, the Commission should initiate a rulemaking proceeding looking towards the possibility of repeal of the radio-television cross-ownership rule.

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56 (1996)

[3] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2002), *pet. for rehearing or rehearing en banc filed*, Nos. 00-1222 et al. (Apr. 19, 2002) ("*Fox*").

[4] *Cross-Ownership of Broadcast Stations and Newspapers*, Order and Notice of Proposed Rule Making, MM Docket Nos. 01-235 and 96-197 at ¶ 15 (rel. Sept. 20, 2001)

[5] *Fox*. 280 F.3d at 1053. Although the Commission has petitioned for rehearing of the *Fox* decision, it has only challenged the court's construction of the standard of review applicable to the Commission's biennial evaluation of its ownership rules. The Commission has not taken issue with the court's conclusion that defense of the cable-broadcast cross-ownership rule is a "hopeless cause."

III. The Historical Rationales for the Radio-Television Cross-Ownership Rule No Longer Obtain.

The court's analysis of the cable-broadcast cross-ownership rule in *Fox v. FCC* is instructive. First, the court held that Section 202(h) of the Telecommunications Act of 1996 "is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with. the public interest."[6] The court then analyzed each of the Commission's specific reasons for retaining the rule. The Commission should apply the same analytical framework to the radio-television cross-ownership rule.

The Commission has historically justified its broadcast ownership rules, including the radio-television, newspaper-broadcast and cable-broadcast cross-ownership rules, as necessary to promote economic competition and viewpoint diversity.[7] None of the Commission's broadcast ownership rules remains necessary to promote either of these objectives. It is clear that the Commission for some time has not viewed the radio-television cross-ownership rule as necessary to promote economic competition, and there is no empirical evidence or rational support for the proposition that the radio-television cross-ownership rule has any effect on viewpoint diversity.

When the Commission last examined the radio-television cross-ownership rule in 1999, it gave only one reason for retention of the rule – that the rule was necessary to promote viewpoint diversity. The Commission explained:

> A number of commenters argued that we should eliminate our radio-television cross-ownership rule entirely. We do not believe that course is appropriate at this time. We stated in the TV Ownership Further Notice that elimination of the rule might be warranted

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[6] *Id.* at 1050.

[7] *See, e.g., Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, Notice of Proposed Rule Making and Further Notice of Proposed Rule Making. MM Docket Nos. 00-244 and 01-317 at ¶ 20 (rel. Nov. 9, 2001).

> if we concluded that radio and television stations do not compete in the same local advertising, program delivery, or diversity markets. Although radio and television stations may or may not compete in different advertising markets, we believe a radio-television cross-ownership rule continues to be necessary to promote a diversity of viewpoints in the broadcast media. The public continues to rely on both radio and television for news and information, suggesting the two media both contribute to the "marketplace of ideas'' and compete in the same diversity market. As these two media do serve as substitutes at least to some degree for diversity purposes, we will retain a relaxed one-to-a-market rule to ensure that viewpoint diversity is adequately protected.[8]

In other words, the Commission concluded in 1999 that (1) retention of the radio-television cross-ownership rule is justified only if radio and television compete in the same market, (2) radio and television "may or may not" compete in the same economic marketplace, and **(3)** radio and television may compete in the same "diversity market" because the public "continues to rely on both radio and television for news and information."

The Commission's decision in 1999 to retain a radio-television cross-ownership rule is remarkable for its equivocation about whether radio and television compete in the same advertising and diversity markets. If adjudged today, the decision would fall well short of the analysis necessary to support retention of the rule under *Fox v. FCC.* In any event, there is no reason for any continued ambivalence.

Turning first to the question of economic competition, the Commission cannot continue to take the position that radio television "may or may not" compete in the same advertising market for purposes of the radio-television cross-ownership rule, while also taking the contrary position that radio and television compete in separate markets for purposes of the local ownership rules. For example, the Commission has based all of its recent local radio

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[8] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasring,* 14 **FCC Rcd** 12903. **12949 (1999)** *("1999 Radio-TV Cross-Ownership Report and Order").*

ownership decisions on the presumption that radio and television stations compete in *different* advertising markets, and has rejected all showings attempting to rebut this presumption.[9] The Commission cannot have it both ways. Radio and television advertising are either substitutable products for purposes of an economic competition analysis, or they are not. If radio and television stations compete in *different* advertising markets, then the radio-television cross-ownership rule cannot be justified as a means of promoting economic competition. If radio and television stations compete in the *same* advertising markets, then the local radio and television ownership rules. which look at radio and television station ownership separately, have no basis in the promotion of economic Competition. This is exactly the sort of inconsistency that the court criticized in *Sinclair Broadcasting Group, Inc. v. FCC*, 284 F.3d 148, 164 (D.C. Cir. 2002) ("Having found for purposes of cross-ownership that counting media voices 'more accurately reflects the actual level of diversity and competition in the market,' the Commission never explains why such diversity and competition should not also be reflected in its definition of 'voices' for the local ownership rule.").

Turning next to the question of viewpoint diversity, the Commission determined in 1999 that, for purposes of the goal of promoting citizen access to diverse viewpoints, broadcast radio and television compete in the same market,[10] but it has more recently implied that it may hold a contradictory view. In the pending proceeding on the local radio ownership rule. the Commission suggested that "two attributes of radio broadcasting – its ability to reach mobile users and its audio-only programming – may give radio stations singular access to the

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[9] *Nassau Broad. II. LLC.* FCC 00-145, slip op. at ¶¶ 23-24 (rel. May 17, 2002); *Solar Broad. Co., Inc.*, 2002 FCC LEXIS 1396 at ¶ 29 (rel. Mar. 19, 2002); *Air Virginia, Inc.*, 2002 FCC LEXIS 1398 at ¶ 18 (rel. Mar. 19, 2002); *Great Scott Broad.*, 2002 FCC LEXIS 1399 at ¶¶ 19-21 (rel. Mar. 19, 2002); *Golden Triangle Radio. Inc.*, 2002 FCC LEXIS 1400 at ¶ 21 (rel. Mar. 19, 2002)

[10] *See 1999 Radio-TV Cross-Ownership Report and Order*, 14 FCC Rcd at 12949

public in certain situations . . . ."[11] The Commission then queried whether "those or other attributes of radio broadcasting [are] sufficiently unique that [the Commission] should look at radio separately for diversity purposes . . . ."[12] Again, the Commission cannot have it both ways. Radio and television stations cannot compete in the same diversity market for purposes of one set of broadcast ownership rules, but not for purposes of another. If radio and television stations indeed compete in different markets for diversity purposes, then the rule cannot be said to promote viewpoint diversity – it is as irrelevant for viewpoint diversity purposes as it is for economic competition purposes.

After the Commission reviews the current state of the media marketplace, Viacom believes that it will be clear that, for purposes of the goal of promoting citizen access to diverse viewpoints, broadcast radio and television do compete in the same market. As the Commission observed in 1999, the public relies on both radio and television as sources for news and information. And in evaluating the necessity of any broadcast ownership rule, including the radio-television cross-ownership rule, the Commission should conclude, as it has previously concluded. that "the information market relevant to diversity includes not only TV and radio outlets, but cable, other video media and numerous print media as well."" The public relies on all media – not just broadcast radio and television – for news and information, and thus all media "serve as substitutes at least to some degree for diversity purposes."

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11 *Rules and Policies Concerning Multiple Ownership of Radio Broadcasr Stations in Local Markers*, Notice of Proposed Rule Making and Further Notice of Proposed Rule Making, MM Docket Nos. 00-244 and 01-317 at ¶ 32 (rel. Nov. 9, 2001).

13 *See, e.g., Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 F.C.C.2d 17, 25 (1984).

It is, for example, no longer the case that most Americans rely on broadcast radio and television stations as the sole sources of real-time news and information. Americans today have access to real-time news and information from cable television, the Internet, direct broadcast satellite ("DBS") and the fledging direct audio radio by satellite service ("DARS"), as well as radio and television

Cable television and DBS distribute a broad range of programming choices, including multiple channels dedicated to the 24-hour per day delivery of news and public affairs programming (e.g., CNN, MSNBC, CNBC, **Fox** News, CSPAN-I, CSPAN-2, and CSPAN-3) In addition, most cable television systems also provide regional or local news and public affairs channels, such as News Channel 8 in the Washington market and NY One News in the New York market. In fact, AOL Time Warner now operates its own local news outlets on cable systems in six DMAs. and plans to launch in five more markets before the end of 2002.[14] As of lune 2001, 86.4% of American households subscribed to either cable or DBS or both, up more than ten percentage points from just four years earlier.[15] Cable and DBS are thus important sources of news and information that the Commission can no longer ignore for purposes of the radio-television cross-ownership rule.

The Commission can also no longer ignore the Internet for diversity purposes. Since 1999, the Internet has become the medium of choice for real-time news and information for many Americans. In fact, the Communications Act itself includes the following Congressional finding: "The Internet . . . offer[s] a forum for true *diversity* of political discourse,

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[14] AOL Time Warner currently operaies local cable news networks in the New York, Tampa, Raleigh-Durham-Chapel Hill, Rochester. and Austin DMAs. Local news networks are planned in Charlotte, Syracuse, Albany, Houston and San Antonio. **See** Allison Romano, *Cuble news-net battle brews – in Raleigh?*, BROADCASTING & CABLE ai 20 (Mar. 25, 2002).

[15] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth **Annual** Report, 17 FCC Rcd 1244, 2002 FCC LEXIS 207, Appendix at Table C-1 (2002).

unique opportunity for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. § 230(1)(3) (emphasis added).[16] A June 2000 study by the Pew Research Center for the People and the Press found that eight times as many Americans choose the Internet over network television for breaking financial news, and **six** times as many Americans choose the Internet over radio in such circumstances.[17]

In sum, the Commission must consider the breadth and depth of service provided by all media – not just terrestrial broadcast radio and television – in determining whether there is a market failure that requires continued government intervention in the form of a radio-television cross-ownership rule. These other media – cable, DBS, the Internet and DARS, as well as newspapers and other print media – all "contribute to the "marketplace of ideas" and compete in the same diversity market.""

Given the wealth of media options available, a single group owner of television and radio stations cannot dominate local debate on public issues. Even assuming that a group owner might choose to broadcast only one viewpoint, the public would continue to have access to other viewpoints from other broadcasters, cable and DBS news and information services (including CNN and CSPAN), daily and weekly newspapers, the Internet and other media. Such an assumption would, however. be wrong. As Viacom has explained in the local radio ownership proceeding, marketplace reality dictates that a group owner broadcast diverse viewpoints in order to maximize audience reach.[19] Moreover, a recent study of newspaper-

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16 *See also Ashcroft* ı. *American Civil Liberties Union*, No. 00-1293, slip op. at 1 (US 2002).

17 Pew Research Center for the People & the Press, *Internet Sapping Broadrasr News Audience, available at* people-press.org/reports/print.php3?ReportID=36 (last visited May 16,2002).

18 *See* 1999 *Radio-TV Cross-Ownership Reporr and Order.* 14 FCC Rcd ai 12949.

19 Comments of Viacom Inc., MM Docker Nos. 00-244 and 01-3 17, at 32 (tiled Mar. 27,2002).

broadcast combinations found that "evidence does not support the fears of those who claim that common ownership of newspaper and broadcast stations in a community inevitably leads to a narrowing ... of the range of news and opinion in the community."[20]

The retention of the radio-television cross-ownership rule is also flatly inconsistent with the elimination of the cable-broadcast cross-ownership rule and the pending re-examination of the newspaper-broadcast cross-ownership rule. While there are all-news radio stations in most major markets, including stations owned by Viacom, it is also true that broadcast radio is primarily an entertainment medium and that most radio stations program primarily music formats. Without doubt, daily newspapers and cable news services such as CNN, MSNBC and Fox News are more important sources of news and information for more Americans than most radio stations.

Moreover. daily newspapers and cable television systems are no less local media than radio. In fact, cable television is the quintessential local medium, in that a cable system not only is franchised by a local governmental entity, but also serves a smaller geographical area than a radio station. Because of their local franchises, cable television systems tend to be natural monopolies, each with the capacity to provide hundreds of channels of programming. In *Fox v. FCC*, the court faulted the Commission for failing to respond to the argument that "the concern with diversity cannot support an across-the-board prohibition of [cable-broadcast] cross-ownership in light of the Commission's conclusion in the TV Ownership Order that common ownership of two broadcast stations need not unduly compromise diversity.""

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20 David Pritchard, *A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 FED. COMM. L.J. 31, 49 (2001).

21 *Fox*, 280 F.3d 1027. 1052 (D.C. Cir. 2002), *pet. for rehearing or rehearing en banc filed*, Nos. 00-1222 et al. (Apr. 19, 2002).

The radio-television cross-ownership rule places disproportionate limits on radio ownership. Specifically, under no circumstance does the rule allow the common ownership of the maximum number of radio stations permitted under the local radio ownership rule, which is eight, and even a single television station. On the other hand, the rule permits common ownership of the maximum number of television stations permitted under the local television rule, which is two, and up to six radio stations. Repeal of the radio-television cross-ownership rule therefore would merely have the effect of allowing the common ownership of one or two additional radio stations in the largest markets. It is difficult to see how viewpoint diversity could be harmed by the common ownership of one or two more radio stations in such markets, the ownership which would otherwise be permitted under the local radio ownership rule, yet not harmed by the common ownership of radio and television stations and a local cable television system.

IV. Even If There Remains Some Rationale for Retention of a Radio-Television Cross-Ownership Rule, The Current Rule Draws Arbitrary Lines.

If the Commission determines that some justification remains for **a** radio-television cross-ownership rule, it should at least modify the rule to reflect more precisely the varying levels of diversity found in markets of different size. The current radio-television cross-ownership rule draws three lines:

- The common ownership of **up** to two commercial television stations (if permitted under the Commission's local television ownership rule) and one commercial radio station is permitted in any market with <u>one to nine independently owned media voices</u>.

- The common ownership of up to two commercial television stations (if permitted under the Commission's local television ownership rule) and four commercial radio stations is permitted in any market with at least <u>ten independently owned media voices</u>.

- The common ownership of up to two television (if permitted under the Commission's local television ownership rule) and six radio stations or one television and seven radio stations is permitted in any market with at least <u>twenty independently owned media voices</u>.

In *Sinclair v. FCC*, the D.C. Circuit held that "notwithstanding the substantial deference to be accorded to the Commission's line drawing, the Commission [must] provide a reasoned explanation for its action.""

In fashioning the radio-television cross-ownership rule, the Commission arbitrarily "drew the line" at markets having at least 20 independently owned and operated media voices. The Commission has never explained why it applies the same rule to all markets with at least 20 voices, even if the number of independent voices in **a** given market exceeds 20 by 50%, 100%, or even 200%. Under the rule as it now stands, a market with 30, 40, 50 or even 60 independent voices looks the same as a market with only 20 voices. The largest markets are not the same. however, and treating them as such tuns counter to the evidence available to the Commission

Indeed, the Commission recently recognized that large markets have different diversity characteristics than smaller markets in its decision giving Viacom six months to file an application that would bring it into compliance with the radio-television cross-ownership rule in the Los Angeles Arbitron Radio Metro. There, the Commission found that "[t]he size and diversity of the Los Angeles media market makes this a unique circumstance that is unlikely to be present in other media markets" and that Viacorn's continued ownership of radio and television stations in excess of the radio-television cross-ownership limitations during that time

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22 *Sinclair Broad. Group. Inc. v. FCC*, 284 F.3d 148. 162 (2002). citing *Motor Vehicles Mfrs. Ass'n v. State Farm Mut Auto. Ins.* Co.. **463** U.S. 29, **43** (1983).

period would not "unduly limit media diversity in the market."[23] Although the Commission stated that the Los Angeles market is "unique" in this respect, there is in fact nothing unique about the number of independent voices in the Los Angeles market

Attached to this Petition is a table containing estimates of the number of "independent voices" in the top 25 Arbitron Radio Metros, as well **as** in every fifth market between 25 and 100, and every tenth market between 100 and 200. The survey therefore includes information about 50 of the 283 Arbitron Radio Metros.[24]

As the attached table shows, Chicago, Boston, Atlanta and Puerto Rico each has more independent voices than Los Angeles. Six of the top 25 markets have over 50 independent voices. Fourteen of the top 25 markets have at least 40 independent voices, and all of the top 25 markets, except San Diego and Baltimore, have over 30.

As the attached table also demonstrates, the radio-television cross-ownership rule for all practical purposes makes no meaningful distinction among most markets. All but the smallest Arbitron-rated markets have at least 20 independent voices. Thus, the 20-independent-voice threshold is as a practical matter a huge, arbitrary "catch-all" that includes almost every one of the surveyed markets. Only one of the top 100 markets included in the survey – Columbia. South Carolina, #90 – has fewer than 20 independent voices. Not until the 150th market do voice counts consistently fall below 20.

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[23] *Fidelity Television, Inc. and Viacom Television Stations Group of Los Angeles, LLC*, FCC 02-140. slip op. at 2-3 (¶ 7) (rel. May 3, 2002). *See also Telemundo Communications Group, Inc. and TN Acquisition Group*, FCC 02-113, slip op. at 18 (rel. April 10, 2002) ("permitting common ownership on a temporary basis of three television stations in the Los Angeles market will likely have less of an impact on both diversity and competition than in other smaller television markets").

[24] As explained, the numbers of independent voices in each market are "estimates." The methodology is explained in a footnote to the table. Viacom believes that the estimates are reasonably conservative: for example, the table shows ***56*** independent voices in the Los Angeles Arbitron Radio Metro, whereas the Commission recently noted that there are at least 59 independent voices in that market. *Fidelity Television, Inc.*, FCC 02-140, slip op. at 2 (¶7).

If a level of 20 independent voices is sufficiently diverse to permit the common ownership of up to two television stations and six radio stations, as provided in the rule, it is not obvious why the existence of at least 30 independent voices is not sufficient to permit the common ownership of at least two television and seven radio stations in the same market, or why the existence of 40.50 or 60 independent voices is not sufficient to allow at least the common ownership of radio and television stations up to the maximum limits applicable under the local television and radio ownership rules. In other words, the Commission has not sufficiently tailored its rule to account for the different levels of diversity and competition available to the public in the larger markets.

The "voices" included in the Commission's voice count also do not adequately reflect the true number of independent media outlets available in the local media market. Under the radio-television cross-ownership rule, the Commission counts only full-power broadcast television and radio stations, English-language daily newspapers with circulations exceeding 5% of the households in the DMA and one cable system for the entire market. As explained in Section III of this Petition, other media have an equal or greater impact on viewpoint diversity, most pointedly cable programming services – specifically local, regional and national cable all-news services. Certainly, it makes no sense to include a daytime-only AM radio station with a limited coverage area, but to exclude CNN or a local all-news cable service. The radio-television cross-ownership rule also arbitrarily (and discriminatorily) excludes non-English language daily newspapers – for example, *El Diario La Prensa* in New York City and *La Opinion* in Los Angeles – notwithstanding that the tule counts Spanish-language or other non-English-language radio and television stations. Indeed, there are numerous sources of local news and information not counted under the rule. For example, a recent study found at least 244 such local media outlets available to a typical consumer at one location in New York City.[25] The omission of these other "voices" has not been adequately explained.

In other words, the current radio-television cross-ownership rule draws several arbitrary lines. In the event that the Commission determines ultimately not to repeal the radio-television cross-ownership rule, its rulemaking proceeding should contain proposals to address these deficiencies.

V. **Conclusion.**

In the final analysis, it is clear that the historical justifications for government intervention in the marketplace no longer apply. The radio-television cross-ownership rule should be repealed. because it neither promotes economic competition nor advances viewpoint diversity and therefore is no longer necessary in the public interest. Americans have access to virtually countless outlets for news and information, including not only broadcast commercial and noncommercial radio and television stations, but also cable- and satellite-delivered audio and video channels, daily and weekly newspapers in English and other languages, and a vast array of Internet websites, an increasing number of which incorporate audio and video content in addition to text. This array of media outlets transmits literally thousands of distinct viewpoints on a daily basis. Viewpoint diversity – i.e., access by Americans to and competition among diverse and "antagonistic" sources of news and information – exists as never before.

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[25] *See* David Pritchard, ***The Expansion of Diversity: A Longitudinal Study of Local Media Outlets in Five*** *American Communities*, Comments of Viacom Inc., MM Docket Nos. 00-244 and 01-317 (filed Mar. 27, 2002) at Appendix **A.**

Even if some reason can be found to retain radio-television cross-ownership rule, the current rule requires modifications because it arbitrarily fails to take into account meaningful distinctions among stations and markets. Accordingly, Viacom urges the Commission promptly to commence a rulemaking proceeding for the purpose of thoroughly reviewing the continued necessity of the radio-television cross-ownership rule and looking towards the rule's ultimate repeal or modification.

Respectfully submitted.

VIACOM INC.

By: ______________________________

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Estimated Number of independent "Voices" in Selected Arbitron Radio Metros

Arbitron Radio Metro Market Rank	Arbitron Radio Metro Market Name [1]	istimated Number c ndependent Voices
1	New York, NY	47
2	Los Angeles. CA	56
3	Chicago, IL	77
4	San Francisco, CA	44
5	Dallas-Ft. Worth. TX	49
6	Philadelphia, PA	53
7	Houston-Galveston, TX	45
8	Washington. DC	38
9	Boston, MA	66
10	Detroit. MI [3]	41
11	Atlanta. GA	57
12	Miami-Ft. Lauderdale-Hollywood. FL	45
13	Puerto Rico	70
14	Seattle-Tacoma, WA	48
15	Phoenix, AZ	39
16	Minneapolis-St. Paul, MN	34
17	San Diego. CA [3]	20
18	Nassau-Suffolk (Long Island) [4]	n/a
19	St. Louis. MO	46
20	Baltimore. MD	27
21	Tampa-St. Petersburg-Clearwater. FL	35
22	Denver-Boulder. CO	36
23	Pinsburgh, PA	36
24	Portland, OR	34
25	Cleveland, OH	35
26	Cincinnati. OH	35
30	San Antonio. TX	35
35	Columbus. OH	25
40	Indianapolis, IN	35
45	Nashville, TN	47
50	Buffalo-Niagara Falls, NY [3]	21
55	Louisville. KY	26
60	Westchester, NY [5]	n/a
61	Albany-Schenectady-Troy, NY	30
65	Tulsa, OK	29
70	Ft. Myers-Naples-Marco Island. FL	20
75	Monterey-Salinas-Santa Cruz. CA	22
80	Sarasota-Bradenton. FL	24
85	Little Rock, AR	27
90	Columbia, SC	19
95	Daytona Beach, FL	22

Estimated Number of Independent "Voices" in Selected Arbitron Radio Metros

Arbitron Radio Metro Market Rank	Arbitron Radio Metro Market Name [1]	Estimated Number o Independent Voices
100	Johnson City-Kingsport-Bristol. TN-VA	27
110	Roanoke-Lynchburg, VA	29
120	Portsmouth-Dover-Rochester. NH	22
130	Ft. Collins-Greeley, CO	24
140	Trenton, NJ	25
150	Fayetteville (North West Arkansas), AR	15
160	Poughkeepsie, NY	25
170	New Bedford-Fall River, MA [6]	n/a
171	New London, CT	12
180	Kalamazoo. MI	17
190	Traverse City-Petoskey. MI	15
200	Clarksville-Hopkinsville. TN-KY	17

[1] Source: Arbitron "Spring '02 Blue Book" (Arbitron Radio Market Metro Rank determined by Metro 121 Population).

[2] The number of independently owned and operated voices is an estimate based on the following methodology: Using BIA Financial Network. Inc.'s MEDIA Access Pro 3.0 Radio/Television Analysis Databases (as of 05/14/02). we determined the number of owners of primary radio stations (Class D and LPFM stations were excluded) in each Arbitron Radio Metro and the number of television station owners in each Nielsen Designated Market Area ("DMA") that encompassed the relevant Metro. We subtracted the sum of all owners owning both radio and television stations in the same market. The number of radio station owners includes only stations assigned by Arbitron to the market (as reported by BIA). Out-of-market radio stations with a minimum share as reported by Arbitron were excluded, notwithstanding that Section 73.3555(c)(3)(ii)(A)(2) of the FCC's rules permits the inclusion of these Stations. However, we may not have excluded all stations operated under Local Marketing Agreements by another station's owner in the market. The number of television station owners includes only stations assigned by Nielsen to a DMA (as reported by BIA). It excludes satellite stations (whether or not independently owned and operated). Class A, low power television and translator stations. We may not. however, have excluded all television stations operated under LMAs by the owner of another station in the market. There may also be a few instances where television stations are included in the voice count that would not be counted under the rule because of the absence of overlapping grade B contours. In order to compensate for possible over-counts. the estimated voice count does not include daily English language newspapers or cable systems that would otherwise be counted under the radio-television "cross ownership" rule.

[3] In Detroit. San Diego and Buffalo. the number of independent radio and television station owners does not include owners of Mexican or Canadian stations. even though Arbitron includes these stations in its Metro listings for these markets.

[4] Nassau-Suffolk (Long Island) Arbitron Metro is part of the New York Arbitron Metro (Source: Arbitron "Spring '02 Blue Book). Because the stations in the Nassau-Suffolk Metro are included in the New York Metro. they are not included in this table.

[5] Westchester Arbitron Metro is part of the New York Arbitron Metro (Source: Arbitron "Spring '02 Blue Book). Because the stations in the Westchester Metro are included in the New York Metro. they are not included in this table.

[6] New Bedford-Fall River Arbitron Metro is part of the Providence-Warwick-Pawtucket Arbitron Metro (Source: Arbitron "Spring '02 Blue Book). Because the stations in the New Bedford-Fall River Metro are included in the Providence-Warwick-Pawtucket Metro, they are not included in this table.